

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION**

**CORBEO JONES AND
CYNTHIA ANN JONES**

PLAINTIFFS

V.

CIVIL ACTION NO. 2:22-CV-93-KS-MTP

**JONES COUNTY, MS; SHERIFF JOE
BERLIN; DEPUTY JAMES MANN; SGT.
JESSE JAMES; DEPUTY COLTON
DENNIS; UNKNOWN DEPUTIES
OF THE JONES COUNTY SHERIFF 1-5;
DONNIE SCOGGIN; AND
CAROL JOHNSTON**

DEFENDANTS

DEFENDANT DONNIE SCOGGIN’S MOTION TO DISMISS

COMES NOW, Defendant Donnie Scoggin (“Scoggin” or “Defendant”), by and through counsel, and files his Motion to Dismiss, and in support thereof, states as follows:

1. Pursuant to Fed. R. Civ. P. 12(b)(6), Plaintiffs’ claims against Scoggin fail as a matter of law and must be dismissed. Plaintiffs’ claims against Scoggin arise out of medical treatment provided to their deceased son, Andrew Wesley Jones, while incarcerated at the Jones County Adult Detention Center between December 9, 2020 and January 9, 2021.

2. Since at all times relevant to Plaintiffs’ claims Scoggin was acting within the course and scope of his employment with South Central Regional Medical Center – a “community hospital” that is entitled to the protections of the Mississippi Tort Claims Act (“MTCA”) – Plaintiffs’ claims against Scoggin fall within the scope of the MTCA. Miss. Code Ann. §11-46-1, *et seq.*

3. Therefore, Plaintiffs’ claims against Scoggin must be dismissed for two separate reasons. First, Plaintiffs’ claims against Scoggin must be dismissed, because Plaintiffs failed to

provide a pre-suit notice of claim as required by Miss. Code Ann. §11-46-11. *Burnett v. Hinds Cty.*, 313 So. 3d 471, 475-76 (Miss. 2020)(affirming dismissal of claims against MTCA entities because plaintiff failed to provide proper notices of claims the various governmental entity defendants). Second, even if Plaintiffs had complied with the pre-suit notice of claim requirements, under the MTCA, Plaintiffs' claims against Scoggin must still be dismissed, because as an employee of South Central Regional Medical Center, he cannot "be held personally liable for acts or omissions occurring within the course and scope of the employee's duties." See Miss. Code Ann. §11-46-7(2); see also Affidavit of John Chioco, a copy of which is attached hereto as **Exhibit 1**.

4. Consequently, all of Plaintiffs' claims against Scoggin that fall within the scope of the Mississippi Tort Claims Act must be dismissed.

5. In addition, Plaintiffs' Complaint [Doc. #1] appears to assert a claim for punitive damages against Scoggin. Punitive damages are not recoverable under the MTCA. See Miss. Code Ann. §11-46-15. Accordingly, Plaintiffs' punitive damage claim against Scoggin must also be dismissed.

6. In further support of this Motion, Scoggin adopts and incorporates as if stated in full herein his Memorandum in Support of Motion to Dismiss, which is filed contemporaneously with this Motion.

WHEREFORE, PREMISES CONSIDERED, Defendant, Donnie Scoggin, respectfully requests that the Court grant his motion and enter an order dismissing all claims asserted against him that fall within the scope of the Mississippi Tort Claims Act. Defendant respectfully requests any additional relief that the Court deems appropriate.

Respectfully submitted, this the 7th day of **October, 2022**.

DONNIE SCOGGIN, DEFENDANT

BY: /s/ Richard O. Burson
His Attorney

RICHARD O. BURSON-MSB#7580
GRAYSON LACEY-MSB#102304
BURSON ENTREKIN ORR MITCHELL & LACEY PA
535 North Fifth Avenue
P.O. Box 1289
Laurel, MS 39441-1289
Phone: 601-649-4440
Fax 601-649-4441
Email: burson@beolaw.com
lacey@beolaw.com
Of Counsel for Defendant Donnie Scoggin

CERTIFICATE OF SERVICE

I, Richard O. Burson, attorney for the defendant, do hereby certify that I have this filed the foregoing document with the Clerk of Court using the CM/ECF system, which will send a true and correct copy to all counsel of record.

This the 7th day of **October, 2022.**

/s/ Richard O. Burson
RICHARD O. BURSON